

## SCHOONER POLLY.

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LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS,  
TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND  
OF FACT IN THE FRENCH SPOILIATION CASES RELATING TO  
SCHOONER POLLY AGAINST THE UNITED STATES.

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JANUARY 29, 1902.—Referred to the Committee on Claims and ordered to be printed.

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### COURT OF CLAIMS.

*Washington, D. C., January 28, 1902.*

SIR: Pursuant to the order of the Court of Claims I transmit herewith the conclusions of fact and of law, filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel schooner *Polly*, Charles Ellms, master.

Respectfully,

JOHN RANDOLPH,  
*Assistant Clerk Court of Claims.*

HON. DAVID B. HENDERSON,  
*Speaker of the House of Representatives.*

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[Court of Claims. French spoliations. (Act of January 20, 1885, 23 Stat. L., 283.) Vessel, schooner *Polly*, Charles Ellms, master.]

No. of case.

Claimant.

1503. James G. Freeman, receiver, Boston Marine Insurance Company, *v.* The United States.  
1940. Seth P. Snow, administrator of Crowell Hatch, *v.* The United States.  
3273. Edward E. Ellms, administrator of Charles Ellms, *v.* The United States.  
Edward E. Ellms, administrator of Lemuel Vinal, *v.* The United States.  
Edward E. Ellms, administrator of William Vinal, *v.* The United States.

### CONCLUSIONS OF FACT.

These cases were tried before the Court of Claims on the 16th day of May, 1901.

The claimants were represented by George S. Boutwell, J. M. Wilson, William T. S. Curtis, and Theodore J. Pickett, and the United States, defendants, by the Attorney-General, through his assistant in the Department of Justice, Charles W. Russell, esq., with whom was Assistant Attorney-General Louis A. Pradt.

The court, upon the evidence and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows:

I. The schooner *Polly*, Charles Ellms, master, sailed on a commercial voyage on or about the 23d day of December, 1799, from Edenton, N. C., bound to Antiqua. While peacefully pursuing said voyage the *Polly* was seized on the high seas on or about the 18th day of January, 1800, by the French privateer *La Soliel*, and a prize crew placed on board with orders to proceed to Guadeloupe. While so in possession of the French the *Polly* was recaptured by the British frigate *Southampton*, Capt. John Harvey, and carried to Tortola, where said vessel and cargo were condemned and sold by decree of the court of vice-admiralty to pay a salvage of one moiety.

Subsequently under said decree said vessel and cargo were sold, and after all costs and expenses were paid, there was received by the owners of said vessel and cargo as final salvage the sum of \$468.31.

It appears that the account of the sales shows that the vessel and cargo brought about equal portions and that the owners of the vessel should have received \$236 and the owners of the cargo \$232.31.

II. The *Polly* was a duly registered vessel of the United States of 63 $\frac{3}{4}$  tons burden, was built in Massachusetts in the year 1799, and was owned in equal shares by William Vinal, jr., Lemuel Vinal, and Charles Ellms, citizens of the United States, residing in Scituate, Mass.

It appears that the vessel was chartered for the voyage by the owners of the cargo for the sum of \$1,500.

III. The cargo of the *Polly* consisted of corn, staves, headings, and shingles, and was owned by Henry Flury and Thomas Bissell & Son, citizens of the United States. No claim has been filed on behalf of the said owners of the cargo.

IV. The losses by reason of the capture of the *Polly*, so far as claims have been filed in this court, were as follows:

The value of the vessel .....	\$2, 538
Less salvage received on vessel .....	236
Net loss .....	2, 302

V. March 18, 1800, said William Vinal, jr., and Lemuel Vinal effected insurance on said vessel, one-half each, in the sum of \$1,000, paying therefor a premium of \$160, by a policy underwritten by the Boston Marine Insurance Company.

August 8, 1800, said company duly paid the said assured the sum of \$944.23, as and for a loss by reason of the premises.

The Boston Marine Insurance Company was duly incorporated under the laws of the State of Massachusetts and authorized to carry on the business of marine insurance.

VI. February 26, 1800, said Charles Ellms effected insurance on said vessel in the office of Peter C. Brooks, in the sum of \$750, paying therefor a premium of \$112.50, the policy being underwritten by Crowell Hatch.

August 9, 1800, said Brooks, as agent, duly paid the assured the sum of \$711.38, as and for a loss by reason of the premises.

VII. The losses to the different claimants by reason of said capture were as follows:

Charles Ellms:

One-third value of vessel .....	\$846. 00
Premium of insurance paid .....	112. 50
	958. 50
Less one-third salvage received .....	\$78. 67
Less insurance received .....	711. 38
	790. 05
Leaving net loss to him .....	168. 45

William Vinal, jr.:

One-third value of vessel .....	846. 00
Premium of insurance paid .....	80. 00
Total .....	926. 00
Less one-third salvage received .....	\$78. 67
Less insurance received .....	472. 12
	550. 79
Leaving net loss to him .....	375. 21

Lemuel Vinal:

One-third value of vessel .....	846. 00
Premium of insurance paid .....	80. 00
Total .....	926. 00
Less one-third salvage received .....	\$78. 66
Less insurance received .....	472. 11
	550. 77
Leaving net loss to him .....	375. 23

The Boston Marine Insurance Company:

Amount of insurance paid to William Vinal, jr., as set forth in Finding V. \$944. 23  
Crowell Hatch:

Amount of insurance paid to Charles Ellms, as set forth in Finding VI. 711. 38

VIII. James G. Freeman is the duly appointed receiver of the Boston Marine Insurance Company.

Seth P. Snow and Edward E. Ellms have produced letters of administration upon the estates of the parties for whom they appear and have otherwise proved to the satisfaction of the court that the persons for whose estates they have filed claims are in fact the same persons who suffered loss by the seizure of the *Polly*, as set forth in the preceding findings.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803; and were not claims growing out of the acts of France, allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants in their representative capacity are the owners of said claims, which have never been assigned.

CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure was illegal and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished by France to the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimants are entitled to the following sums from the United States:

James G. Freeman, receiver Boston Marine Insurance Company, nine hundred and forty-four dollars and twenty-three cents.....	\$944. 23
Seth P. Snow, administrator of Crowell Hatch, seven hundred and eleven dollars and thirty-eight cents.....	711. 38
Edward E. Ellms, administrator of Wm. Vinal, jr., three hundred and seventy-five dollars and twenty-one cents.....	375. 21
Edward E. Ellms, administrator of Lemuel Vinal, three hundred and seventy-five dollars and twenty-three cents.....	375. 23
Edward E. Ellms, administrator of Charles Ellms, one hundred and sixty-eight dollars and forty-five cents.....	168. 45

Total amount recoverable, two thousand two hundred and seventy-four dollars and fifty cents .....	2, 274. 50
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By THE COURT.

Filed December 2, 1901.

A true copy.

Test this 28th day of January, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,  
Assistant Clerk Court of Claims.

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REPORT OF THE COMMISSIONERS OF THE LAND OFFICE  
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE  
JANUARY 18, 1907

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